

ESTTA Tracking number: **ESTTA484528**

Filing date: **07/19/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Decommodification LLC
Granted to Date of previous extension	08/15/2012
Address	50 Balmy Street San Francisco, CA 94110 UNITED STATES

Attorney information	Adam C. Belsky Gross Belsky Alonso LLP One Sansome Street Suite 3670 San Francisco, CA 94104 UNITED STATES adam@gba-law.com Phone: 415-544-0200 x102
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Applicant Information

Application No	85443887	Publication date	04/17/2012
Opposition Filing Date	07/19/2012	Opposition Period Ends	08/15/2012
Applicant	brad carruth 4865 joule st #c7 reno, NV 89502 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Alcoholic energy drinks
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2813051	Application Date	02/15/2003
Registration Date	02/10/2004	Foreign Priority	NONE

		Date	
Word Mark	BURNING MAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1986/06/01 First Use In Commerce: 1987/06/01 ORGANIZING COMMUNITY FESTIVALS FEATURING A VARIETY OF ACTIVITIES, NAMELY, LIVE MUSIC, ART DISPLAYS, AND PARTICIPATORY GAMES; CONDUCTING ENTERTAINMENT EXHIBITIONS IN THE NATURE OF ART FESTIVALS; AND ENTERTAINMENT IN THE NATURE OF ART FESTIVALS		

U.S. Registration No.	2800469	Application Date	02/14/2003
Registration Date	12/30/2003	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1995/04/08 First Use In Commerce: 1995/04/08 Organizing community festivals featuring art exhibits; conducting entertainment exhibitions in the nature of art festivals, entertainment in the nature of art festivals		

Attachments	78214817#TMSN.gif (1 page)(bytes) Notice of Opposition re Application 85443887.pdf (3 pages)(46210 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Adam C. Belsky/
Name	Adam C. Belsky
Date	07/19/2012

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8 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
9 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

10 DECOMMODIFICATION LLC,) Opposition No. _____
11 Opposer,) NOTICE OF OPPOSITION
12 v.) Application Serial No.: 85443887
13 BRAD CARRUTH dba BURNING MAN) For the Mark: BURNING MAN ENERGY
ENERGY,) Filed: October 11, 2011
14 Applicant.) Published: April 17, 2012
15)
16 _____
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18 **NOTICE OF OPPOSITION**

19 Decommodification LLC (“Opposer”), a California limited liability company and the owner
20 of the mark BURNING MAN, believes that it will be damaged by the registration of the mark shown
21 in Application Serial No. 85443887, filed on October 11, 2011, by Brad Carruth dba Burning Man
22 Energy (“Applicant”), and published for opposition on April 17, 2012, and hereby opposes registration
23 thereof pursuant to a 30-day and subsequent 60-day extensions of time previously granted by the
24 Board, up to and including August 15, 2012.

25 1. Applicant seeks to register the mark BURNING MAN ENERGY in International Class
26 33 for the following goods and services: “Alcoholic energy drinks.” The application was filed as an
27 intent-to-use application.

28 2. Opposer Decommodification LLC is the owner of the mark BURNING MAN,

1 Registration No. 2813051.

2 3. Opposer is also the owner of the design mark for the Burning Man logo, Registration
3 No. 2800469 (the “Burning Man Logo Mark”).

4 4. Opposer, and its predecessors in title, have continuously used the BURNING MAN
5 mark beginning at least as early as June 1986, to identify, advertise, and promote the Burning Man
6 event, which is an annual arts, performance and community event that takes place each year near Reno,
7 Nevada. The BURNING MAN mark has become well known and famous. The BURNING MAN
8 mark became well known and famous many years before Applicant filed its trademark application.

9 5. The trademark proposed for registration by Applicant, which disclaims the exclusive
10 right to use “ENERGY” apart from “BURNING MAN” is substantially the same as Opposer’s
11 BURNING MAN mark. Applicant’s mark, when compared to Opposer’s BURNING MAN mark, so
12 nearly resembles Opposer’s BURNING MAN mark as to be likely to be confused with Opposer’s
13 BURNING MAN mark. Applicant’s mark is deceptively similar to Opposer’s BURNING MAN mark
14 so as to cause confusion and lead to deception as to the origin, source, and sponsorship of Applicant’s
15 goods bearing Applicant’s mark.

16 6. If Applicant is granted the registration herein opposed, confusion in trade resulting in
17 damage and injury to Opposer would be caused and would result by reason of the similarity between
18 Applicant’s mark and Opposer’s BURNING MAN mark. Persons familiar with Opposer’s BURNING
19 MAN mark would be likely to purchase Applicant’s goods mistakenly believing them to be products
20 sold or endorsed by Opposer.

21 7. Though Applicant’s trademark application is in a different class than Opposer’s mark
22 (Applicant has applied in International Class 33 for alcoholic energy drinks, and Opposer’s BURNING
23 MAN mark is in International Class 41, for organizing community festivals), there are significant
24 factors that demonstrate that Applicant is intending to use its proposed mark to trade on the reputation
25 of the BURNING MAN mark and on Opposer’s good will.

26 8. One factor demonstrating that Applicant is intending to cause deception as to the origin,
27 source, and sponsorship of Applicant’s goods is that Applicant has also filed a separate trademark
28 application – Application No. 85444356 (currently suspended) – seeking to register a stick man logo

1 design for alcoholic energy drinks – and this design is virtually identical to and confusingly similar to
2 Opposer’s Burning Man Logo Mark (Registration No. 2800469). This action shows that Applicant’s
3 intent is to trade on the good will that Opposer has established in its BURNING MAN mark.^{1/}

4 9. Another factor demonstrating that Applicant’s intended use is to trade on Opposer’s
5 BURNING MAN mark is that the Burning Man event is well-known to symbolize active, late night
6 activities, and therefore the use of the mark BURNING MAN with the word “energy” is meant to
7 symbolize the energetic nature of the Burning Man event.

8 10. In addition to the fact that Applicant’s mark is confusingly similar to Opposer’s
9 registered Mark and is intended to trade on the goodwill associated with Opposer’s registered Mark,
10 Applicant’s intended use of the BURNING MAN mark also would dilute the quality of the Mark by
11 diminishing the capacity of the Mark to identify and distinguish Opposer’s goods and services or
12 licensed goods and services. Applicant’s intended use of the BURNING MAN Mark would also dilute
13 the quality of the Mark by tarnishing the good name and reputation of Opposer.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Opposer prays that the application Serial No. 85443887 be refused registration
16 and that this opposition be sustained.

17 Dated: July 19, 2012

18 Respectfully submitted,

19 GROSS BELSKY ALONSO LLP

20 By: /s/ Adam C. Belsky
21 Adam C. Belsky

22 Attorneys for Opposer
23 DECOMMODIFICATION LLC

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27 ^{1/} Applicant has also filed an intent-to-use trademark application for BURNING MAN ENERGY in
28 International Class 5, for dietary supplemental drinks in the nature of vitamin and mineral beverages. Serial
No. 85/179477. This application had been published for opposition last year, but no statement of use has
been filed. Opposer intends to file a motion to cancel this trademark application, for similar reasons as stated
in this opposition.